

FILED

FEB 24 2000

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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af

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

No. C 94-02307 CW

Plaintiffs,

ORDER DENYING
DEFENDANTS' EX PARTE
REQUEST FOR AN ORDER
SHORTENING TIME AND
DENYING WITHOUT
PREJUDICE DEFENDANTS'
MOTION FOR A STAY

v.

GRAY DAVIS, et al.,

Defendants.

Defendants move for a stay of the Court's December 23, 1999 permanent injunction, and move ex parte for an order shortening time for the holding of a hearing on the motion for a stay. Having considered the papers filed in support of the ex parte request, the Court finds that Defendants have not demonstrated good cause for hearing the motion for a stay on shortened time, and therefore DENIES the ex parte request (Docket No. 546).

The Court further finds that Defendants' motion for a stay fails to set forth a basis for a stay of the entire permanent injunction. Defendants argue that certain aspects of the permanent injunction raise serious questions on the merits and that the balance of hardships tips in their favor. However, although their arguments are addressed only to certain portions of the Court's conclusions of law, Defendants seek a stay of the entire permanent

1 injunction. Because the questions on the merits that Defendants
2 assert are serious could at best support a partial stay of the
3 injunction, the Court DENIES without prejudice Defendants' motion
4 for a stay (Docket No. 545). Defendants may file a renewed motion
5 for a stay, but shall identify in their motion the specific
6 portions of the permanent injunction that arise from the
7 conclusions of law that Defendants assert raise serious questions
8 on the merits. Defendants should also specifically identify those
9 portions of the permanent injunction the implementation of which
10 pending appeal would cause the State significant hardship. Absent
11 a further showing of good cause for hearing the motion on shortened
12 time, any renewed motion for a stay shall be filed as a regularly
13 noticed motion.

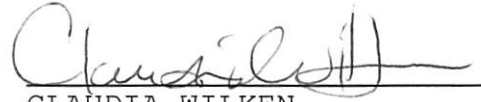
14 In light of the standard applicable to motions for stays, the
15 State in any such renewed motion must make an appropriate showing
16 on both elements--serious questions on the merits and hardship
17 caused by implementation--to obtain a stay of any portion of the
18 injunction. The Court notes that Defendants appear, in part, to
19 argue that requiring them to implement certain portions of the
20 injunction would be oppressive, regardless of their likelihood of
21 success on the merits of their appeal. See Motion for Stay at 5
22 ("the enormity of the task facing the BPT--even were there no
23 question of the court's interpretation of the ADA's requirements--
24 suggests the propriety of appellate review") & 6 n.6 (discussing,
25 without mention of the likelihood of success on the merits of
26 Defendants' appeal, the hardships that Defendants would suffer if
27 forced to implement several portions of the injunction). Absent a
28

1 showing of at least serious questions on the merits, the hardship
2 caused by implementation would not warrant staying any particular
3 portion of the injunction.¹

4 IT IS SO ORDERED.

5
6 Dated:

FEB 24 2000


CLAUDIA WILKEN
United States District Judge

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21 ¹However, upon an appropriate motion, "a court which issues an
22 injunction retains jurisdiction to modify the terms of the
23 injunction if a change in circumstances so warrants." Nicacio v.
24 INS, 797 F.2d 700, 706; Fed. R. Civ. P. 60(b)(6) (upon such terms
25 as are just, courts may relieve parties from obligations imposed by
26 a final judgment); cf. Bellevue Manor Assocs. v. United States, 165
27 F.3d 1249, 1256-57 (9th Cir. 1999) (discussing Rule 60(b)(5) and
28 holding that "courts may properly consider such factors as the
greater interest in finality posed by a purely commercial case and
the broader impact of a sweeping public-interest-type litigation
injunction in determining whether to modify or vacate prior
relief"); but see United States v. Alpine Land & Reservoir,
Co., 984 F.2d 1047, 1049 (9th Cir. 1993) (Rule 60(b)(6) is used
"sparingly" and typically only "to prevent manifest injustice").

United States District Court
for the
Northern District of California
February 24, 2000

* * CERTIFICATE OF SERVICE * *

Case Number:4:94-cv-02307

Armstrong

vs

Wilson

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 24, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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